

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEBBIE NOVOTNY,
 Plaintiff(s),

v.

SMITH'S FOOD AND DRUG CENTERS,
 INC.,
 Defendant(s).

Case No. 2:21-cv-01386-APG-NJK

Order

[Docket No. 6]

Pending before the Court is the parties' discovery plan. Docket No. 6. The unusual circumstances of this case raise several issues that require further attention by the parties.

A suggestion of death was filed in state court just prior to removal, on July 21, 2021. Docket No. 1 at 26. The discovery plan notes that the rule applicable in state court requires the filing of a motion to substitute within 180 days after service of a suggestion of death. Docket No. 6 at 2 n.1; *see also* Nev. R. Civ. P. 25(a)(1). By contrast, the federal rule requires the filing of a motion to substitute within 90 days after service of a suggestion of death. Fed. R. Civ. P. 25(a)(1). The parties do not provide meaningful discussion as to which of these rules applies in this case.

The discovery plan also asks the Court to set a deadline to file a motion to substitute for September 21, 2021. Docket No. 6 at 2. The discovery plan does not provide legal authority or meaningful discussion as to whether the Court is permitted to set a deadline to file a motion to substitute at only 62 days after the service of a suggestion of death given the contrary deadlines established in the rules discussed above.

1 Lastly, the parties seek entry of various discovery deadlines even though they acknowledge
2 that discovery cannot begin absent a substitution. *See* Docket No. 6 at 2.¹ Given that a failure to
3 file a motion to substitute is grounds for dismissal and given that the date on which substitution
4 may occur is unknown at this time, it is unclear whether discovery deadlines should be set at this
5 time or whether they should be set (if necessary) upon resolution of the substitution issue. *Cf.* Fed.
6 R. Civ. P. 1.

7 Given all of the above, the parties' discovery plan is **DENIED** without prejudice. A
8 renewed discovery plan must be filed by August 18, 2021. The renewed discovery plan must
9 provide meaningful discussion as to each of the issues identified above.

10 IT IS SO ORDERED.

11 Dated: August 4, 2021

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14 Nancy J. Koppe
15 United States Magistrate Judge
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28 *Id.* ¹ These deadlines are calculated from the "anticipated substitution" on September 21, 2021.